



## DEPARTMENT OF TRANSPORTATION

### MATERIALS TRANSPORTATION BUREAU

WASHINGTON, D.C. 20590

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#### Title 49—Transportation

#### CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM-157; Amdt. No. 177-39]

#### PART 177—CARRIAGE BY PUBLIC HIGHWAY

##### Incorporation of the Federal Motor Carrier Safety Regulations by Reference

AGENCY: Materials Transportation  
Bureau, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to incorporate by reference the Federal Motor Carrier Safety Regulations under the authority of the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. 1801, et seq. Except for certain recordkeeping requirements, the Motor Carrier Safety Regulations have previously been enforceable by criminal penalties only. This amendment is intended to authorize the use of civil penalty and other enforcement tools provided by the Hazardous Materials Transportation Act.

DATE: This amendment is effective on February 6, 1978.

#### FOR FURTHER INFORMATION CONTACT:

In the legal office: Gerald M. Tierney, Attorney, Chief Counsel's Office, Federal Highway Administration, Room 4217, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-0346. In the program office: David B. Goodman, Hazardous Materials Specialist, Vehicle Requirements Branch, Bureau of Motor Carrier Safety, Room 3404, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1700.

**SUPPLEMENTARY INFORMATION:** This amendment is consistent with the policy of reissuing regulations formerly issued under the Explosives and Other Dangerous Articles Act (EODAA) (18 U.S.C. 831-34) so that regulations will be effective under the new HMTA. Such reissuance is performed pursuant to the direction in the HMTA to bring all rules and regulations into conformity with the purposes and provisions of that Act as soon as practicable, Pub. L. 93-633, section 114(b)(2). The Federal Motor Carrier Safety Regulations (FMCSR) are currently applicable to carriers of hazardous materials pursuant to 49 CFR 397.2 which is issued jointly under the Interstate Commerce Act (ICA), 49 U.S.C. 304, and the EODAA, 18 U.S.C. 831-835. The effect of this amendment is merely to make civil penalties and other enforcement tools of the HMTA applicable to those haz-

ardous materials carriers already subject to Parts 390-397. Because this amendment merely reissues, under new authority, regulations already in effect, notice and comment are unnecessary. For the same reason, this amendment is effective upon publication.

As the FMCSR are being incorporated by reference, the intent, scope of application and preemptive effects of the FMCSR, as reissued under the HMTA, are unchanged. The Department does not intend for this action to alter the categories of persons subject to the FMCSR, to alter the substance of those regulations, or to preempt State or local law not preempted by the FMCSR before incorporation into Part 177. However, §§ 397.3 and 397.9 are not being reissued under the HMTA at this time. Reissuance of both sections is being deferred pending further review, and in the meantime both sections will continue, as in the past, to be enforceable with criminal penalties provided by the statutes under which they were originally promulgated.

Primary drafters of this document are Gerald M. Tierney, Chief Counsel's Office, Federal Highway Administration, and David B. Goodman, Vehicle Requirements Branch, Bureau of Motor Carrier Safety.

The issuance of this regulation does not constitute a major action requiring an inflationary impact evaluation or an environmental impact statement, nor will it impose additional costs or burdens on Federal, State, or local governments.

In view of the foregoing, Part 177 of Title 49, Code of Federal Regulations, is amended as follows:

1. In the Table of Sections, an entry for § 177.804 is added to read:

Sec.

177.804 Compliance with Federal Motor Carrier Safety Regulations.

2. A new § 177.804 is added to read:

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

Motor carriers and other persons subject to this Part shall comply with 49 CFR Parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those rules apply.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e).)

Issued in Washington, D.C., on January 31, 1978.

L. D. SANTMAN,  
Acting Director, Materials  
Transportation Bureau.

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